

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 12 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0280-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
BRUCE ALAN WILSON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR1998007648

Honorable Douglas L. Rayes, Judge

REVIEW GRANTED; RELIEF DENIED

Bruce A. Wilson

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Bruce Wilson seeks review of the trial court's order summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Wilson has not met his burden of establishing such abuse here.

¶2 The procedural history of Wilson's case is detailed thoroughly in this court's previous decision ordering the trial court to dismiss Wilson's previous successive Rule 32 proceeding, and there is no need to repeat that history in its entirety here. *State v. Wilson*, No. 1 CA-CR 08-0456 PRPC, 1-4 (decision order filed May 26, 2009). In that proceeding, Wilson claimed pursuant to *State v. Gonzales*, 216 Ariz. 11, 162 P.3d 650 (App. 2007), that his sentence for attempted sexual conduct with a minor as a dangerous crime against children was improper because his victims were nine years old at the time of his offenses and former A.R.S. § 13-604.01,¹ governing dangerous crimes against children, did not encompass attempted sexual conduct with a child under the age of twelve. 1997 Ariz. Sess. Laws, ch. 179, § 1. We stated, relying on *State v. Shrum*, 220 Ariz. 115, 203 P.3d 1175 (2009), that *Gonzales* was not a significant change in the law pursuant to Rule 32.1(g) and a claim based on that case therefore could not be raised in a successive petition for post-conviction relief. *Wilson*, No. 1 CA-CR 08-0456 PRPC, at 4-5. We additionally determined an unlawful sentence was not a jurisdictional defect and, accordingly, Wilson's claim was subject to waiver and therefore preclusion. *Id.* at 4-5.

¹Section 13-604.01 has been revised and renumbered as A.R.S. § 13-705. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29.

Thus, as noted above, we instructed the court to dismiss Wilson's petition for post-conviction relief. Our supreme court declined to grant review of that ruling.

¶3 Wilson then filed a pro se petition for writ of habeas corpus, again arguing, based on *Gonzales*, that he had been sentenced illegally and that the illegal sentence was a jurisdictional defect not subject to waiver. He also asserted he therefore was being held beyond the maximum sentence that could have been imposed for his crimes. Wilson further claimed his second petition had been timely and, in the alternative, his failure to seek relief timely from his sentence was without fault on his part and he should be accorded relief pursuant to Rule 32.1(f). The trial court, construing Wilson's petition as a petition for post-conviction relief pursuant to Rule 32.3, summarily dismissed it, determining he, in essence, was asking the court to review our decision order, and he therefore had not presented a cognizable claim under Rule 32. The court also determined that Rule 32.1(f) did not apply because Wilson's petition was not of-right.

¶4 On review, Wilson again asserts an illegal sentence is a jurisdictional defect not subject to waiver and therefore his claim is not precluded. As the trial court correctly found, we rejected this claim in our previous decision order, and Wilson may not attack that decision collaterally in a successive Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2); *see also* *Stewart v. Smith*, 202 Ariz. 446, ¶ 11, 46 P.3d 1067, 1071 (2002) (Rule 32.2 is "designed . . . to prevent endless or nearly endless reviews of the same case in the same trial court"). Wilson also appears to claim he is entitled to relief pursuant to Rule 32.1(d), which permits relief when "[t]he person is being held in custody after the sentence imposed has expired," and is not subject to preclusion. Ariz. R. Crim. P.

32.2(b). That claim is unavailing; his sentence, even if improper, has not expired. Finally, the court correctly rejected his argument that Rule 32.1(f) applied to his petition because Wilson's petition for post-conviction relief was successive and therefore not of-right.

¶5 For the reasons stated, although review is granted, relief is denied.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge